

1932

*Feb. 22.
*Mar. 31.

HIS MAJESTY THE KING (DEFENDANT) . . APPELLANT;

AND

ROBERT F. CUTTING (SUPPLIANT) RESPONDENT.

ON APPEAL FROM THE COURT OF KING'S BENCH, APPEAL SIDE,
PROVINCE OF QUEBEC

Banks and banking—Petition of right—Succession duties—Bank shares—Owner domiciled in United States—Shares registered outside of Canada—Whether the words “elsewhere” in s. 42, ss. 5 of the Bank Act authorize share registry offices outside Canada—Bank Act, R.S.C., 1927, c. 12.

The words “or elsewhere,” in subsection 5 of section 42 of the *Bank Act*, both under their ordinary meaning and in the light of prior legislation are adequate to provide for the establishment of places for registration and transfer of shares outside the Canadian territory, in respect of shares owned by persons not resident in Canada.
Judgment of the Court of King's Bench (Q.R. 51 K.B. 321) aff.

*PRESENT:—Duff, Rinfret, Lamont, Smith and Cannon JJ.

APPEAL from the judgment of the Court of King's Bench, appeal side, province of Quebec (1), affirming the decision of the Superior Court, Gibsone J., and maintaining the respondent's petition of right for \$13,513.01 which had been paid under protest to the treasury of the province of Quebec for succession duties on 275 shares of the Bank of Montreal, owned by one Brown, of the city of New York, deceased.

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The respondent, acting in his quality of sole surviving executor of the late MacEvers Bayard Brown, in his lifetime of the city of New York, by petition of right seeks to recover from the appellant in right of the province of Quebec \$12,573.72, which he paid to the appellant under protest on the 10th of May, 1927, and a further sum of \$939.29 paid on the 13th of June following, as succession duty on 275 shares of the capital stock of the Bank of Montreal belonging to the estate of the late Mr. Brown. Mr. Brown was a citizen of the United States and during all the time relevant to this case he had his domicile in the city of New York, where he died on the 8th of April, 1926. The Bank of Montreal has its head office in the city of Montreal, Que. Formerly its shares were transferable on its books at its head office only. A transfer of shares is made on the register of the bank by the holder of them in person or by attorney authorized by special power of attorney and is accepted by the transferee in the same way. That was the procedure followed when Mr. Brown acquired the 275 shares of the stock of the bank, and on the 1st November, 1920, Mr. Brown appeared on the register at the head office of the bank as the owner of 275 shares of its capital stock.

The transfer of shares of the capital stock of Canadian banks is governed by the provisions of sections 42 *et seq.* of the *Bank Act*, of which paragraphs 4 and 5 have special application on this appeal. They read:

"4. The bank may open and maintain in any province in Canada in which it has resident shareholders and in which it has one or more branches or agencies, a share-registry office, to be designated by the directors, at which the shares of the shareholders, resident within the province,

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shall be registered and at which, and not elsewhere, except as hereinafter provided, such shares may be validly transferred.

"5. Shares of persons who are not resident in Canada or in any province in which there is a branch or agency of the bank may be registered and shall be transferable at the chief office of the bank or elsewhere, as the directors may designate."

The directors of the bank, acting under what they conceived to be the power and authority conferred upon the bank by these paragraphs, by by-law passed on the 14th of April, 1927, opened share-registry offices in each of the provinces of Canada in which the bank had a branch and resident shareholders, and also at the office of the bank in the city of London, England, and at its agency in the city of New York. The part of the by-law now relevant is as follows:—

By-law no. 23

(a) Share-registry offices for the registration and transfer of the shares of the capital stock of the bank shall be opened and maintained at:

(1) The place where the head office of the bank is situate, namely, at the city of Montreal in the province of Quebec;

* * *

(3) The agency of the bank in the city of New York in the state of New York;

* * *

(b) Shares of persons who are not resident in Canada may be registered either on the register in the city of Montreal or on the register in the city of London, or on the register in the city of New York, and on the request in writing of the shareholder may be removed from one of these registers and placed on another, but such shares may be transferred only on the register on which they are then registered.

* * *

(e) Whenever there is a change of ownership of any shares, or a change of residence of any shareholders, and it is necessary in order to conform to the foregoing provisions of this by-law that a change should be made in the place

of registry of the shares concerned, such change shall be made forthwith.

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(f) For the purposes of this by-law, a shareholder shall be deemed to be resident at the place in which he has according to the books of the bank his post office address.

(g) The board of directors shall from time to time appoint persons to act as local registrars of stock at the share-registry offices of the bank other than at the city of Montreal or designate other officers or employees of the bank to perform the duties of such office. The registrar of stock, the local registrars of stock, or the officer or officers of the bank designated by the board to perform the duties of these offices, shall, subject to the direction of the board keep at each of the share-registry offices of the bank an accurate register or registers of the shareholders of the bank whose shares are registered at such share-registry office, containing the post office address and description of each such shareholder * * *

Following up this by-law, the bank opened a share-registry office at its agency in New York and appointed a local registrar to take charge of it. On the 8th of October following, 1925, the 275 shares belonging to Mr. Brown were removed from the head office register at Montreal to the New York register and were still there at the time of his death.

Aimé Geoffrion K.C. and *Ls. St. Laurent K.C.* for the appellant.

Arnold Wainwright K.C. and *D. C. Abbott* for the respondent.

W. N. Tilley K.C. for the Attorney-General for Canada.

The judgments of Duff and Smith JJ. were delivered by

DUFF J.—There is, I think, only one question of substance involved in this appeal. That question is whether the words “or elsewhere” in section 42, ss. 5 are adequate to provide for the establishment of places for registration and transfer of shares outside of Canada. I thought at first that the difficulty was important. Full consideration has led me to the conclusion that the ordinary force of the

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words of the subsection (they had better be quoted in full)—

Shares of persons who are not resident in Canada or in any province in which there is a branch or agency of the bank may be registered and shall be transferable at the chief office of the bank or elsewhere, as the directors may designate.

are not affected by any context upon which the appellant relies. I can perceive nothing in subsection 4 which expressly or by implication qualifies subsection 5.

It cannot, on a fair construction of the statute, be held that shares must be registered at a "branch or agency of the bank" because the statute enacts that where the shareholder resides in a province where there is not a "branch" or "agency" shares

may be registered and shall be transferable at the chief office of the bank or elsewhere as the directors may designate.

This is not the natural way of saying that shareholders must register their shares at the head office or at some "branch or agency," which is also a "share registry office."

The proper inference from the whole section appears to be that a "share registry office" need not be a "branch" or "agency" or the "head office."

Reference should perhaps be made to Mr. St. Laurent's contention that this view conflicts with the presumed policy of the Act: namely, that the registration and transfer of the shares of banks should be governed exclusively by the Canadian law. But there is nothing in the *Bank Act* to prevent a purchaser or creditor acquiring by contract a right legal and equitable to require the vendor or debtor to do whatever is necessary in order to effect a legal transfer of such share; and the question whether such is the effect of the contract will depend upon the law of the place where the contract is made—*Colonial Bank v. Cady* (1), nor I apprehend—is there any doubt that the conditions under which title to its shares may be acquired is exclusively matter for the law making authority of the jurisdiction where the Corporation has its proper domicile. For Canadian banks, in the absence at all events of special legislation, this domicile is a single one, Canada, by reason of the fact that the whole subject of banking, as well as the incorporation of banks, is exclusively a subject for Dominion legislation.

The appeal should be dismissed with costs. No costs to or against the Attorney-General for Canada.

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RINFRET J.—I agree with my brothers Duff and Lamont. The word “elsewhere” (in subsection 5 of section 42 of the *Bank Act*), both under its ordinary meaning and in the light of the prior legislation, shews, in my view, the intention of Parliament to authorize the Canadian banks to open and maintain share registry offices outside of the Canadian territory. (Compare *Wright & Carson v. Brake Service Ltd.* (1), and comments of the Privy Council on that decision in *Canadian General Electric Company v. Fada Radio Limited* (2), and in *Rice v. Christiani* (3).

The appeal should be dismissed with costs.

The judgments of Lamont and Cannon JJ. were delivered by

LAMONT J.—The respondent in this appeal is the surviving executor of the last will and testament of McEvers Bayard Brown who, in his lifetime, was an American citizen domiciled in the state of New York, and died there on April 8, 1926. Among the assets comprising his estate at the time of his death were 275 shares of the capital stock of the Bank of Montreal, a corporation created under Canadian law with its head office in the city of Montreal in the province of Quebec. The respondent took out letters probate in the state of New York and, as the testator had considerable assets in the province of Quebec, he applied to have the assets there registered in his name as executor. In making his application he pointed out that in so far as the 275 shares in the Bank of Montreal stock were concerned they were not subject to succession duty in the province, inasmuch as they were registered on the share-register of the bank in the city of New York and transferable only on that register. The collector of succession duties for the province refused to permit registration of the assets of the testator's estate in the name of the respondent until payment had been made of the succession duty which, he claimed, was payable in respect of the 275 shares. The

(1) [1926] S.C.R. 434.

(2) [1930] A.C. 97, at 106.

(3) [1931] A.C. 770, at 781.

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basis of this claim was that the shares were property within the province of Quebec. The respondent paid the amount of the duty (\$13,513.01) under protest, and then commenced these proceedings by way of petition of right for an order that the Crown in right of the province be adjudged to refund him the said sum with interest thereon and costs.

In answer to the petition the Attorney-General for Quebec set up:

1. That the shares of the capital stock of the bank constituted an interest in the net assets of the bank, which were owned and controlled at its head office and not elsewhere, and that each shareholder's right or interest therein constituted an interest in property situated in the province in which the head office was located, and was, therefore, subject to such direct taxation as the provincial legislature saw fit to impose.

2. That the *Bank Act* (now R.S.C., 1927, c. 12), properly construed, did not authorize the bank to establish a share-register outside of Canada, but, if it did, to that extent it was *ultra vires*, and

3. In any event the by-law of the bank purporting to establish a register in the state of New York did not comply with the Act.

The Superior Court granted the prayer of the petition and directed a refund of the duty paid in respect of the shares. On appeal the Court of King's Bench unanimously affirmed the judgment, and the Crown now appeals to this court.

1. The first of these above contentions was rejected by the Privy Council in *Brassard v. Smith* (1), where it was held that shares of the capital stock of a bank, incorporated under the *Bank Act*, which had been transferred from the register at the bank's head office to the register of the bank in another province, were, for the purposes of succession duty, property in the province in which the shares were registered, and not in the province in which the head office was situated. This principle was reaffirmed in the case of *Erie Beach Company v. Attorney-General for Ontario* (2).

(1) [1925] A.C. 371.

(2) [1930] A.C. 161.

2. The greater part of the argument before us was made in support of the contention that the Act did not authorize the establishment of share-registers outside of Canada. The material section of the Act is s. 42 (5):—

Shares of persons who are not resident in Canada or in any province in which there is a branch or agency of the bank may be registered and shall be transferable at the chief office of the bank or elsewhere, as the directors may designate.

Under the authority of this section the directors of the bank passed by-law no. 23, which, in part, reads as follows:

(a) Share-registry offices for the registration and transfer of the shares of the capital stock of the bank shall be opened and maintained at:

(1) The place where the head office of the bank is situate, namely, at the city of Montreal in the province of Quebec;

(2) The office of the bank in the city of London, England;

(3) The agency of the bank in the city of New York in the state of New York;

(4) The office of the bank in each of the other provinces of Canada in which the bank has resident shareholders. * * *

(b) Shares of persons who are not resident in Canada may be registered either on the register in the city of Montreal or on the register in the city of London, or on the register in the city of New York, and on the request in writing of the shareholder may be removed from one of these registers and placed on another, but such shares may be transferred only on the register on which they are then registered.

It was argued that the words "or elsewhere" in s. 42 (5) must be construed as meaning "or elsewhere in Canada," because the territorial jurisdiction of the Canadian Parliament was restricted to the Dominion, and that to construe "elsewhere" as including places beyond the Dominion would amount to an assertion of the competence of the Canadian Parliament to legislate as to the legal effect to be given to a transfer of shares made in another country.

The short answer to this argument, in my opinion, is that the word "elsewhere" in the subsection is either ambiguous or it is not. If it is not ambiguous it must be given its ordinary natural meaning, which is, "in some other place" or "any other place." This does not restrict the places at which transfers of shares may be made to places in Canada. If it is ambiguous we are at liberty to look at the prior legislation to ascertain the sense in which it was used. That legislation shews that from 1852 the Bank of Montreal had legislative authority to maintain a register of shares in Great Britain. Other banks had similar rights by pre-Confederation legislation. In 1871 a general *Bank Act* was passed (34 Vict., c. 5). That Act permitted a bank to

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open branches at any place or places in the Dominion. It also provided that the share of the capital stock of the bank might be transferable in the United Kingdom of Great Britain and Ireland. In 1890 the Act was revised and a bank was given the right to "open branches, agencies and offices" without the limitation as to the Dominion contained in the Act of 1871. In 1913 the Act was again revised and provision was made by which shares could be transferred as set out in s. 42 (5), above quoted.

When we consider that Canadian banks were opening branches in various parts of the world outside of Canada, and that it would be for the convenience of their shareholders in those parts to be able to transfer their shares in the country in which they were residing, it seems more reasonable to suppose that the intention of Parliament in enacting s. 42 (5) was to assist the banks by authorizing the keeping of registers where the directors thought it most convenient, than to infer an intention to take away the right, enjoyed prior to 1913, of having a register in Great Britain. In my opinion the word "elsewhere" in s. 42 (5) is not limited to Canada, nor does the subsection imply an assertion of legislative competence on the part of Parliament to determine the legal effect to be given to acts performed in other countries. The effect of a contract to transfer shares made in another country must depend upon the laws of that country. But, subject to that law, it is within the competence of the Parliament of Canada in legislating on the subject of banks and banking—a matter over which it is given exclusive jurisdiction by section 91 of the *British North America Act*, 1867—to compel a bank, its own creature, to recognize as valid a lawful transfer made outside of Canada, when made in the manner prescribed by the Act. *Secretary of State of Canada v. Alien Property Custodian* (U.S.) (1).

3. It was also contended that the by-law did not comply with the Act, inasmuch as the directors did not "designate" the place of transfer outside of Canada, as required by s. 42 (5), but left it to the shareholder to select the register upon which his shares would be placed. I am of opinion that a by-law which provides that shares may be registered

at one of several specified places is a designation by the directors within the meaning of the Act.

The appeal should be dismissed with costs.

Appeal dismissed with costs.

Solicitors for the appellant: *St. Laurent, Gagné, Devlin & Taschereau.*

Solicitors for the respondent: *Fleet, Phelan, Fleet, Robertson & Abbott.*

Solicitor for the Attorney-General of Canada: *W. Stuart Edwards.*

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